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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Administration of justice at the United Nations

Management review of the appeals process at the United Nations

Note by the Secretary-General*

1. Pursuant to General Assembly resolutions 48/218 B of 29 July 1994, 54/244 of 23 December 1999 and 57/307 of 15 April 2003, the Secretary-General has the honour to transmit for the attention of the General Assembly the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the management review of the appeals process at the United Nations.

2. The Secretary-General takes note of the findings and concurs with the recommendations made in the report, which will improve the Secretariat's appeals process, subject to the observations provided by the Secretariat.

* The present report could not be submitted prior to the deadline because the review had not been concluded at that time.

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Report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations

Summary

Pursuant to General Assembly resolution 57/307, the Office of Internal Oversight Services (OIOS) carried out a management review of the appeals process at the United Nations from March to July 2004. In the resolution, the Assembly specifically requested that the report of OIOS include "measures to shorten the period required for the disposal of cases, including imposing deadlines at all stages of the process", and that the review examine "not only the procedures and functions related to the Joint Appeals Board but also those related to the Panel of Counsel, the Administrative Law Unit and the secretariats of the Joint Appeals Board and the Joint Disciplinary Committee, as well as their impact on and contribution to the administration of justice."

In performing the review, OIOS did not examine individual case files or seek to make a judgement on whether individual decisions by the Joint Appeals Board were meritorious or consistent with other decisions. Instead, it focused on procedural and institutional matters. Accordingly, the findings can be grouped into four main categories: the time taken to complete the process; the institutional roles played by the various entities in the process; the resources available to the respective parties; and training and communication.

With respect to the time taken to complete the process, OIOS found that the appeals process at most duty stations could be streamlined to make it shorter. The average time for New York during the past five years has ranged from 27 to 37 months; for Geneva, from 15 to 26 months, and for Nairobi from 19 to 26 months. Only in Vienna were appeals completed in 10 to 17 months. Such delays are attributed to gaps in the formal guidelines that govern the time lines for the process and bottlenecks in productivity caused by insufficient resources. OIOS has recommended time lines for the appeals process and accompanying measures to remove bottlenecks and increase productivity.

Regarding the resources available to the respective parties, OIOS found that respondents had available to them the five staff members, including one P-5 and two P-4s, who comprise the Administrative Law Unit of the Office of Human Resources Management. Appellants have only the two General Service staff members and the volunteers provided through the Panel of Counsel available to them. Appellants must pay the costs of any outside legal assistance they engage, while respondents' legal costs are borne by the Organization. OIOS has recommended that measures be considered to strengthen the resources available to the appellants, such as the recruitment of professional staff for the Panel of Counsel.

With respect to the institutional roles played by the several entities in the process, OIOS found that the Department of Management serves as respondent, handling the appeals process through the Administrative Law Unit as representative of the Secretary-General, and also takes a decision on the recommendations of the Joint Appeals Board panel on behalf of the Secretary-General. OIOS has recommended clarification of accountability and measures to mitigate conflict of interest.

With respect to training and communication, OIOS found that there were shortcomings in the training provided to members of the Joint Appeals Board and the Panel of Counsel. OIOS also found that there was scope for improving the access of staff to information about the status of their appeals through secure electronic means.

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I. Introduction

1. Pursuant to General Assembly resolution 57/307 of 22 May 2003, the Office of Internal Oversight Services (OIOS) hereby submits its report on the management review of the appeals process at the United Nations. In paragraphs 8, 10 and 11 of the resolution, the Assembly welcomed the initiative taken by the Secretary-General in requesting OIOS to undertake the review, and specifically requested that the ensuing report include "measures to shorten the period required for the disposal of cases, including imposing deadlines at all stages of the process", and that the review examine "not only the procedures and functions related to the Joint Appeals Board but also those related to the Panel of Counsel, the Administrative Law Unit and the secretariats of the Joint Appeals Board and the Joint Disciplinary Committee, as well as their impact on and contribution to the administration of justice". The present report addresses those issues.

2. Under article XI of the United Nations Staff Regulations, staff members can appeal administrative decisions alleging the non-observance of their terms of appointment. They may also request a suspension of action for administrative decisions that have not already been implemented and the implementation of which would, in their view, result in irreparable injury to them. Article X of the Staff Regulations deals separately with disciplinary measures adopted by the Secretary-General that may be imposed on staff members whose conduct is unsatisfactory. The following units and bodies are responsible for managing the United Nations administrative and disciplinary process:

- The Administrative Law Unit, Office of Human Resources Management, Department of Management, is responsible for conducting administrative reviews for the United Nations system, acting as respondent on behalf of the Administration in cases filed in New York, providing advice to staff (appellants) and managers (respondents) with a view to resolving conflicts informally, representing the Administration in disciplinary cases and contributing to the formulation of policy in areas affecting the administration of justice.
- Joint Appeals Boards have been established in New York, Geneva, Vienna and Nairobi to review appeals submitted by staff members contesting an administrative decision that allegedly violates their conditions of employment.
- Joint Disciplinary Committees deal with disciplinary cases. The secretariats of the Joint Appeals Boards also serve as Joint Disciplinary Committee secretariats.
- The Panels of Counsel, also present at the four headquarters duty stations, are responsible for facilitating the provision of advice or assistance to staff members and, where appropriate, represent staff members in both administrative and disciplinary procedures.
- The Office of the Under-Secretary-General for Management reviews all Joint Appeals Board reports and makes decisions on the Boards' recommendations on behalf of the Secretary-General. It also reviews and takes decisions on disciplinary cases and follows up on the implementation of the Secretary-General's decisions on all such cases, as well as on the implementation of the judgements of the United Nations Administrative Tribunal. The Office is also

the focal point for the formulation of policy in areas affecting the administration of justice. The Office handles cases from all duty stations, as well as cases from the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), and the United Nations Office for Project Services (UNOPS).

3. It should be emphasized at the outset that the OIOS review did not concern itself with the merits of individual cases. OIOS did not review any individual case files and has not sought to make any judgements on whether individual recommendations by the Joint Appeals Board were meritorious or consistent with other recommendations. Instead, OIOS limited its review to procedural and institutional matters and has focused on efficiency considerations. Accordingly, OIOS examined such matters as the length of time taken to complete the process, the resources allocated to all sides for performing the functions required and the training available to the various parties involved.

4. In conducting its review, OIOS undertook extensive consultations with a wide range of staff, including members of the Administration involved in various stages of the appeals process, the secretariats of the various Joint Appeals Boards, members of the Boards and members of the Panels of Counsel in New York, Geneva, Vienna and Nairobi. Data from the various duty stations were collected, formatted and analysed.

5. It is important to note that the appeals process is only the last, formal phase in a framework for conflict resolution that relies mostly on informal mechanisms. Those mechanisms bring together a broad range of participants, including supervisors and human resources officers, the Ombudsman, the Panels on Discrimination and Other Grievances, the Staff Counsellors, departmental focal points for women and staff representative bodies. It is only when their efforts fail that the appeals process is invoked. There are also parallel specialized avenues of recourse provided for matters related to pensions, medical decisions, classification of posts, performance appraisal, injury or death attributable to service, competitive examinations for recruitment and loss of personal effects, all of which lighten the burden of the Joint Appeals Board.

6. The appeals process consists of more than 15 discrete steps, which are set out in annex I. Some of those steps are subject to statutory deadlines, which are described in either the Staff Rules or the Rules of Procedure of the Joint Appeals Board. Many others are discretionary. OIOS reviewed data on cases completed between 2000 and 2003. In addition, 1999 data relating to New York were reviewed. For the purpose of identifying bottlenecks in the process, OIOS developed eight indicators derived from the 15 steps cited above. They are used to provide data on the situation at the four headquarters duty stations at which a Joint Appeals Board has been established, as set out in annex II.

7. OIOS also reviewed the functions and responsibilities of the various Secretariat units and boards involved in the process, including the Administrative Law Unit, the Joint Appeals Boards, the Panels of Counsel and the Office of the Under-Secretary-General for Management. The comments of management are reproduced in italics.

II. Time taken to complete the appeal process

A. Request for review

8. Currently, before staff members can file an appeal against an administrative decision they must submit a request for an administrative review of the decision to the Secretary-General within two months of receiving written notice of the contested decision (staff rule 111.2 (a)). The Secretary-General's office transmits the request to the Administrative Law Unit (see annex I, steps A.1 and A.2). The Administrative Law Unit can seek conciliation, in which case the time limits can be suspended for up to two months. If conciliation is not sought or if it fails, the Unit has one month to provide a substantive reply to the request in the case of staff members in New York or two months for staff members stationed outside New York. This allows the Unit to obtain the necessary information from Geneva, Vienna or Nairobi. As soon as the staff member receives a reply from the Unit on behalf of the Secretary-General that is not satisfactory, an appeal may be filed. If no reply is received after one month, for staff stationed in New York, or two months for staff stationed elsewhere, the staff member can also submit an appeal. At this stage, the staff member has control over the time line. Once the staff member has access to the appeals process, an appeal has to be lodged within one month. In total, therefore, up to seven months can pass from the day on which a staff member receives written notice of a decision to the day on which an appeal has to be filed. OIOS considers these time lines to be reasonable because all the steps are necessary and, for staff away from headquarters, sufficient time is needed for correspondence and document collection.

9. The administrative review is centralized in New York, so staff serving at United Nations offices in Geneva, Vienna and Nairobi as well as in field offices must send their requests to the Secretary-General. The Administrative Law Unit then contacts the respective offices to obtain the information needed to prepare a reply. The inter-office correspondence adds at least two weeks to the process. Moreover, administrators in offices away from New York complain that they have sometimes prepared comments but then discovered that the deadline for a reply had passed without action on the part of the Administrative Law Unit. OIOS attaches great importance to the principle that staff can approach the Secretary-General directly to contest a decision, but suggests that staff rule 111.2 (a) be amended to the effect that a staff member wishing to appeal an administrative decision should write to the Secretary-General and also send a copy to the official heading the staff member's own department, office, fund or programme. In that way, managers can immediately take action and possibly prevent a case from leading to an appeal. At the same time, they can provide a substantive reply on behalf of the Secretary-General through the Administrative Law Unit, thus giving the Unit an opportunity to clear the text and intervene on behalf of the Secretary-General if it feels the need to do so. *The Department of Management stated that, as UNDP, the United Nations Population Fund (UNFPA), UNOPS and UNICEF conducted administrative reviews for their respective staff, the suggested amendment to staff rule 111.2 (a) would need to clarify that requests for review submitted by the staff of those separately administered funds and programmes should be addressed to the appropriate executive head in order to avoid confusion and loss of time.* OIOS agrees with this comment, which is reflected in recommendation 2 below.

B. Initial review by the Joint Appeals Board secretariat

10. At the next stage, the Joint Appeals Board secretariat reviews the file to verify that the appeal meets all formal requirements and that it is complete (see annex I, step B.2). Additional information or materials may be sought. If the appeal appears not to have met the deadline or if no decision has been identified that can be contested, the presiding officer, in consultation with an ad hoc panel, may declare the case not receivable. There is no statutory deadline for this step. The records show that all Joint Appeals Board secretariats normally handle this review expeditiously, that is, within one month (see indicator 1, tables 1-4, annex II, for the performance of the various duty stations). OIOS believes that a deadline of one month should be formally established for this phase, reflecting current practice. *The Department of Management stated that, in practice, the decision on receivability was left to the Joint Appeals Board panel, as the facts were usually complex and necessitated a close examination of all available information, which was normally provided at a later stage by the parties.*

C. Preparation of respondent's reply

11. The first phase in which serious delays regularly occur is in the preparation of the respondent's reply (see annex I, step B.4) by the local Administration at the site of the Joint Appeals Board. In New York, UNDP and UNICEF act as respondents for their own staff members.[1] According to staff rule 111.2 (g), the respondent's reply is due within two months of the date of receipt of the appeal. As shown in indicator 2, tables 1-4, annex II, during the past four years the respondent has rarely been able to meet the deadline, and the entire appeals process suffers delays. In the New York Joint Appeals Board, the submission of a reply took an average of 268.5 days for cases completed in 2000 and further slowed to 448.9 days for cases completed in 2003. This represents a range of nearly 9 months to almost 15 months for UNDP, UNICEF and the United Nations Secretariat.

12. The root causes of these delays at the Secretariat (including UNDP and UNICEF) are twofold. First, the staffing level of the Administrative Law Unit is inadequate (see paras. 27-32 below). Also, managers often do not or cannot provide the Unit with the rationale for their decisions in a timely and comprehensive manner. Until such information is received, the Unit cannot prepare the respondent's reply. On average, managers took 201 days to respond in 2002 and 121 days in 2003. Some took as long as 600 days, according to data provided by the Unit. Recently, as part of the enhanced organizational focus on accountability, managers have been asked to defend their own cases before the Joint Appeals Board. Here again, their active participation in the process is essential. In the view of OIOS, in order for the respondent's reply to be prepared in a timely and comprehensive manner, the Administrative Law Unit should clarify with managers the requirements for the reply and the contributions expected from managers. *The Department of Management, while agreeing with OIOS, noted that the Administrative Law Unit already explained to managers what was required of them when providing comments. The Department also noted that pursuant to staff rule 111.2 (l), the Joint*

[1] The Executive Director of UNFPA, as from 1 June 2004, has the delegated authority to establish a separate Joint Appeals Board (see ST/SGB/2004/10).

Appeals Board was statutorily empowered to request from any staff member information on a case under its review.

13. If the respondent requests an extension of the time limit, the presiding officer of the Joint Appeals Board may grant the request and establish a new deadline. The appellant is then informed of the extension, but the length of the extension is not revealed, apparently because it is not requested. In the view of OIOS, this information should be given to the appellant, and such extensions should be granted only when there are compelling circumstances, such as when records to be submitted come from distant duty stations or field operations. In the case of illness, managers who have to explain their decisions might also receive an extension. In the opinion of OIOS, there should, however, be no more than one extension, and it should not exceed one month. Currently, there are no rules concerning this matter. Improved means of communication, including the ability to transmit facsimile copies of documents electronically, should also facilitate adherence to the deadlines. Given the current backlog, however, the deadline should be phased in as staffing shortages are addressed. *The Department of Management noted that the limit on extension of the deadline to reply to appeals should not become mandatory until the staffing shortages (discussed in paras. 28-32 below) have been addressed and the backlog eliminated in the offices concerned. Otherwise, the Administrative Law Unit could be prevented from replying to new appeals, even though those cases could not be considered by the Joint Appeals Board until its own backlog had been eliminated.*

14. Under current procedures, staff members have no access to the United Nations Administrative Tribunal until the Secretary-General has considered the report of the Joint Appeals Board, which is dependent on the respondent submitting a reply to the Board. As described above, serious delays usually occur in the preparation of the respondent's reply. OIOS believes that, in principle, the Board could begin its consideration of the appeal on the basis of only the facts provided by the appellant and those in the official status file. The Joint Appeals Board could then submit a report containing recommendations that the Secretary-General should consider. This would not benefit the appellant, but such a procedural shortcut would have one major advantage for the staff member: a truncated report of the Board, even if it were rejected by the Secretary-General, would provide access to the Tribunal. Similarly, if the Administration, as respondent, failed to respond within the prescribed time limits, it should be considered that the Secretary-General had approved by default the staff member's access to the Tribunal.

15. *The Department of Management and the Office of Legal Affairs commented that the OIOS proposal overlooked the fact that the Joint Appeals Board was a fact-finding body and that the Tribunal, which is not a de novo body, relied on those facts. Such a fast track would therefore not speed up the process, as the Tribunal would probably remand such cases to the Joint Appeals Board for consideration on the merits, thereby adding to the delays. The Department of Management and the Office of Legal Affairs further stated that the OIOS proposal did not take into account article 7 of the Tribunal's statute, which prohibits a direct appeal to the Tribunal except when the Secretary-General agrees to it. In order to implement the OIOS recommendation, the General Assembly would have to amend the statute so that a direct appeal could be made in the absence of a finding by the Joint Appeals Board, when the respondent failed to respond within the prescribed time limits. The Department of Management also noted that the failure to submit the respondent's reply within a certain period of time was largely a question of lack of resources.* As

discussed in paragraphs 11-13 above, OIOS recognized that the staffing shortage in the Administrative Law Unit was one of the causes of the delays in preparing respondents' replies. However, OIOS also noted that the Unit depended on managers to prepare respondents' replies within the prescribed time limits, which made the process overly dependent on the respondent if the appellant had no automatic access to the Tribunal in case the respondent's reply was not forthcoming. While OIOS agrees that a truncated Board report, rejected by the Secretary-General, could sometimes be remanded by the United Nations Administrative Tribunal, it also believes that, in general, the submission of such reports would have the benefit of providing the Tribunal with timely and useful information on the context of the cases and would ultimately contribute to streamlining of the appeals process. However, in view of the concern expressed by the Department of Management and the Office of Legal Affairs, OIOS suggests that its proposal be deferred for consideration and that the situation be reviewed in a year to see to what extent delays have been reduced through the addition of the extra staff resources recommended in the present report.

D. Preparation of pleadings

16. Currently, once the respondent's reply has been received pleadings begin (see annex I, steps B.5 and B.6). The appellant has one month (two months for staff away from New York) to submit observations on the respondent's reply. If the appellant does not respond in time, the Secretary of the Joint Appeals Board normally sends a reminder asking whether the appellant wishes to forego the right to submit observations. After two failed attempts to communicate with the appellant, the presiding officer may deem the appeal to have been abandoned, in accordance with the Rules of Procedure. If the appellant submits observations, they are sent on to the respondent, who has an opportunity to present additional comments (within two weeks for staff in New York, one month for staff elsewhere). The staff member can then reply. This process continues until the parties have no further comments. In New York, the first round typically takes about 13 months to conclude (see indicators 2 and 3, table 1, annex II).

17. Another 12 months can elapse from the date on which the appellant's first set of observations has been received to the date on which the Joint Appeals Board panel convenes for the first time (see data for New York, 2000-2003, indicator 4, table 1, annex II). As a result, the average time required for pleadings is approximately 25 months. OIOS suggests that a limit of two exchanges be set for pleadings. That is, once the appellant has submitted observations on the respondent's reply, one more exchange should be adequate to allow the Joint Appeals Board panel to be constituted and begin its work. Thus, the time required for pleadings could be reduced to four months for staff away from New York (two months for observations, one month for the respondent's second round and one month for the appellant's final statement) and two months in New York (one month plus two weeks plus two weeks).

E. Preparation of case by the Joint Appeals Board secretariat for panel review

18. When pleadings have been completed, the Joint Appeals Board secretariat prepares a background report based on the staff member's official status file, consolidates the facts of the case as presented by the parties and convenes a panel (see steps B.7 and B.10, annex I). Twelve months can elapse between receipt of the first exchange between respondent and appellant to the first session of the panel. The current tracking system of the Board in New York does not indicate when pleadings have ended; only the Geneva Board is able to produce those data. OIOS believes that in future, all Joint Appeals Board secretariats should monitor how long a case that is ready for review has to stay in the queue. Currently, according to the Board secretariat, there is a one-year waiting period for cases in New York. On the basis of its review of the workload and performance of the panels, OIOS is of the view that no more than two months should elapse from the end of pleadings to the first session of the panel if there is no backlog. At present, no statutory deadline exists.

19. Such delays are particularly serious when the cases involve the non-renewal of contracts, as staff often do not have the luxury of waiting for protracted periods until their case is heard, given the financial implications of unemployment. In the view of OIOS, as a temporary measure, the presiding officer of the Board might consider the concept of "leapfrogging" appeals. That is, when time is considered to be of the essence, a case could "jump" the queue. *The Department of Management disagreed with that proposal because, first, a substantial number of appeals involve the non-renewal of contracts and, second, "leapfrogging" carries the danger of subjectivity on the part of the person who is determining which cases are more important.* OIOS does not view the fact that many appeals concern the non-renewal of contracts as an impediment to giving this category of cases priority over other cases for the reasons already indicated. Furthermore, a similar approach grants Joint Disciplinary Committee cases priority over Joint Appeals Board cases.

F. Review by Joint Appeals Board panel and adoption of report

20. The time required by a Joint Appeals Board panel to conduct the actual case review (see steps B.9-B.11, annex I) and to prepare its report varies dramatically from year to year, particularly in New York, as shown in indicator 5, table 1, annex II. In New York, the time required for each case averaged as little as 46 days during 2003, as compared to an average of almost 137 days in 2001 owing to lack of resources. There is a need for a performance standard to improve accountability. OIOS agrees with Board members that a case review, including preparation of the report, should take no longer than three months when resources are adequate. Currently, as shown in step B.12, annex I, there is a deadline of only one month for adoption of the report once consideration of the appeal has been completed and there is no time line for actual case review.

G. Review by Under-Secretary-General for Management

21. The Joint Appeals Board panel's findings and recommendations are submitted to the Under-Secretary-General for Management, who has one month to take a decision on the report on behalf of the Secretary-General (see steps B.12 and B.13, annex I). However, this process regularly experiences delays, caused largely by the lack of resources (see para. 52). For example, during 2000 and 2003, New York appeals were decided within an average of 63.5 and 67 days respectively, while in 2001 and 2002 the same process took 93 and almost 160 days respectively.

III. Assessing the costs and benefits

22. The General Assembly, in paragraph 8 of its resolution 57/307 of 15 April 2003, referred to the observations and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/57/736), noting that it expected that they would be addressed in the OIOS review. The Advisory Committee asked that OIOS examine whether the provision of a full-time chairperson of the Joint Appeals Board would contribute to expediting the handling of cases. It also asked that OIOS attempt to quantify the cost of a comparative set of cases from the beginning to the time at which those cases were completed at the Administrative Tribunal and to ascertain whether a strategic increase of the resources available at any particular stage of a case would ultimately lead to speedier handling of the cases concerned. The third recommendation of the Advisory Committee concerned the need to explore the extent to which limitations could be placed on the frequency with which the parties were allowed to submit written pleadings and counterclaims.

23. OIOS has addressed each of these three questions in the present report. While it has identified productivity indicators to determine when and where additional resources might be needed, OIOS encountered methodological problems in trying to quantify the costs of individual cases. Such an analysis might be misleading, because the Administrative Law Unit, Panels of Counsel, secretariats of Joint Appeals Boards and the Office of the Under-Secretary-General for Management are simultaneously handling disciplinary cases and requests for suspension of action, without necessarily completing time sheets. In fact, requests for suspension of action and disciplinary cases have priority over regular appeals, and disciplinary cases tend to be remarkably labour-intensive.

24. Also, the staff members involved in managing the appeals process often spend considerable time and effort, even at this late stage, in trying to reconcile the parties and finding non-adversarial solutions. The cost of prevention is hard to measure, yet it is an essential component of the process. Many of these preventive measures remain undocumented, but some can be traced. OIOS found that roughly 30 per cent of the appeals submitted in New York from 1995 to 1999 were either withdrawn or settled before a formal Joint Appeals Board report was prepared (many reports submitted after that time are still in the pipeline). Other duty stations showed a similar pattern. Quantifying and costing the time spent on actual appeals proved difficult, if not impossible.

25. Finally, it should be emphasized that much of the effort in the appeals process is based on time volunteered by staff members. The panellists on the Joint Appeals

Board, who act as "judges" in a peer review, and the members of the Panel of Counsel work without compensation. As such, the cost of administering justice in the United Nations is surely lower than the cost of corresponding processes in Member States.

IV. Institutional role of entities in the process and resources they provide to the parties

26. In this section, OIOS examines how the institutional entities responsible for the process operate, and sets out the resources available to both appellants and respondents — staff and management respectively.

A. Administrative Law Unit

27. The legislative basis for the Administrative Law Unit can be found in Secretary-General bulletin ST/SGB/1998/12, which, in section 6.10, sets out as one of the core functions of the Administrative Law Unit the handling of all aspects of appeals against administrative decisions, as the representative of the Secretary-General, before the Joint Appeals Board and the Joint Disciplinary Committee.

28. The Unit handles disciplinary cases on a priority basis. When resources are limited, those cases tend to dominate the Unit's agenda. Requests for suspension of action also require priority attention, since time is often of the essence. While the Unit managed to close the backlog in dealing with disciplinary cases and is now current, it has not been able to eliminate its backlog of regular appeal cases and has experienced difficulty in taking action on the large number of requests for review.

29. During 2000, the Unit received 167 requests for review but did not have time to respond to any of them. During 2001, 2002 and 2003, it received 103, 132 and 147 requests and conducted 47, 32 and 66 reviews respectively (see table below). Some of the reviews led to settlements. While such settlements resulted in long-term financial savings to the Organization, the initial investment of staff time can exceed the resources needed for litigation. On average, the annual number of appeals resulting from the requests for review was roughly one third: 46, 50, 43 and 35 respectively for the years from 2000 to 2003.

30. Regarding the preparation of respondents' replies, the Administrative Law Unit had similar problems in coping with the workload. An overview of the Unit's workload relative to its staffing, based on an analysis of its database, is provided in the table below.

Workload of the Administrative Law Unit, 2000-2003

Year	Requests for review conducted[a]	Disciplinary cases closed	Requests for suspension of action	Submission of respondents' replies to New York Joint Appeals Board: Number	Submission of respondents' replies to New York Joint Appeals Board: Average time (days)	Administrative Law Unit staff composition: RB	SA	GTA/other
2000	-	55	13	36	289.4	P-5, P-3	P-4	P-3 (for two months)
2001	47 (13)	63	12	25	398.9	P-5, P-3	P-4	P-2 (for five months)
2002	32 (17)	72	21	25	746.5	P-5, P-3	2 P-4	P-2
2003	66 (42)	33	14	59	532.3	P-5, P-3	2 P-4	P-2

Source: Administrative Law Unit 2003 achievement document and tracking database. Workload for resolution at the appeal stage is not included.

Abbreviations: RB, regular budget; SA, support account; GTA, general temporary assistance.

[a] The number of formal review letters sent is shown in parentheses.

31. It is remarkable that the number of respondent replies submitted by the Unit nearly doubled in 2003, shortly after its staffing table had been augmented by an additional P-4 legal officer, bringing the total number of Professional posts to five. The additional resources in 2002 helped to reduce the backlog of disciplinary cases, which was set as a priority. In 2003, this staffing allowed the number of respondents' replies submitted by the Unit to nearly double.

32. The staffing situation in the Unit continues to be a problem, however. Since 1998, it generally has had three or four Professional posts, of which only two were funded from the regular budget. This staffing level correlates with a period in which the delays in its areas of responsibility were excessive, as shown in indicator 2, Table 1, annex II. While the current staffing level of five legal officers (two on regular budget posts, two on peacekeeping support account posts and one on a short-term basis against general temporary assistance funds) reflects the Unit's operational needs, it does not ensure that the Unit will eliminate the backlog of pending cases. One of the five posts is temporary, which is also of concern. Additional staff should be provided to the Unit from temporary assistance until the backlog has been eliminated and the Unit has regained its ability to respond effectively to statutory deadlines.

B. Joint Appeals Board secretariat in New York

33. The Joint Appeals Board secretariat consists of a Secretary at the P-5 level, two legal officers at the P-4 and P-3 levels and three support staff. The secretariat occasionally receives additional funding for temporary assistance. The secretariat of the Board also serves as secretariat of the Joint Disciplinary Committee and, as such, has to assign priority to disciplinary cases. In 2003, for example, it handled six such cases. Requests for suspension of action are also dealt with instantly. When there are staff shortages, therefore, regular appeal cases are delayed.

34. The Board receives some 60 to 70 appeal cases annually, about 20 per cent of which are from UNDP and UNICEF. Under ideal circumstances the secretariat can

dispose of up to 55 cases a year. However, circumstances are rarely ideal, and only recently, following a major increase in temporary assistance funding that allowed for the addition of two Professionals and two retired staff members on a work-as-employed basis, has the secretariat been able to start to address its backlog. In 2003 it disposed of 72 cases. If this level of funding and current rates are maintained, the backlog could be eliminated by the end of 2005. Since the Administrative Tribunal has begun to award monetary compensation for delays at the Joint Appeals Board level, such an investment in temporary assistance could represent a cost-saving measure.[2] However, in the long run, the addition of a fourth post, at the P-3 level, would provide the necessary additional capacity.

35. The recent appointment of a full-time presiding officer in response to the recommendation of the Advisory Committee on Administrative and Budgetary Questions cited earlier also helped to streamline the work of the Board as the incumbent presiding officer could chair meetings and take decisions on procedures without delay. *The Department of Management confirmed that the temporary assignment of a staff member to serve as full-time presiding officer of the New York Joint Appeals Board had significantly improved the effectiveness and quality of the process.* However, this appointment was made on a trial basis and involved borrowing a post from the Office of Human Resources Management because the Board has no posts budgeted for this function. This situation should be regularized, as further efficiencies could be achieved by fully using the powers of the presiding officer under the Board's Rules of Procedure to review suspensions of action and to rule on whether cases meet adjudication criteria and are thus receivable.

C. Joint Appeals Board secretariat in Geneva

36. In Geneva, disciplinary cases and requests for suspension of action also have priority. On average, the Joint Appeals Board secretariat handles from three to five disciplinary cases annually. The Board adjudicates from five to seven requests for suspension of action yearly, and also handles small claims. Its caseload in terms of appeals has fluctuated from 15 (in 2001) to 28 (in 1999 and 2003), and the average number of cases per year is 23. Some of these are withdrawn or settled, but about 18 cases each year require a full report. At the end of 2003, the Board in Geneva had 36 cases pending, the oldest of which dated from 2002. *The Department of Management advised that in the Geneva Joint Appeals Board, at least 40 per cent of the Board's work was dedicated to suspensions of action, conciliations, disciplinary cases and the provision of general legal advice to staff members.*

37. The secretariat is headed by a full-time Secretary at the P-4 level. Two posts in the staffing table are classified at the P-2 level, and incumbents are selected through the National Competitive Examination system. Thus, they normally cannot remain for more than two years, which contributes to gaps between appointments that can occasionally be lengthy, as mandatory departures are not necessarily matched with timely replacements. Moreover, the Secretary has to invest a considerable amount of time to train staff, but consistently loses them once they are fully up to speed, limiting the secretariat's institutional memory. *The Department of Management advised that the Secretary of the Geneva Joint Appeals Board and Joint Disciplinary*

[2] See *Bonder*, case 1052, and *Balzo*, case 1062, both adjudicated in 2002.

Committee was also the United Nations Office at Geneva officer dealing with compensation claims, a time-consuming function.

38. OIOS believes that one of the current P-2 posts should be established at the P-3 level to accommodate the function of Deputy Secretary, allowing for the recruitment of a second lawyer who would not be subject to frequent rotation. This would enhance the productivity of the office and provide more institutional stability. Also, general temporary assistance funding should be made available, as was done in the case of the New York Board, until the backlog is eliminated.

D. Joint Appeals Board secretariat in Vienna

39. The caseload of the Joint Appeals Board in Vienna is quite modest, since both the International Atomic Energy Agency and the United Nations Industrial Development Organization each have their own appeals machinery. On average, the Board receives from three to five appeals annually, plus one or two requests for suspension of action. During 2002, however, it received 12 appeal cases, all related and quite complex, placing unexpected pressures on the system.

40. The Vienna Board has no full-time Secretary, and junior staff members with legal backgrounds are asked to step in. During the past three years, turnover has been high. Moreover, the Board has no office and no established post for secretarial support.

41. In the view of OIOS, there is a need to establish a post in Vienna for a "roving" Secretary to the Joint Appeals Board and the Joint Disciplinary Committee. The Secretary, when not engaged in Board matters, could also serve as back-up for peak periods in Geneva and possibly New York. In addition, a part-time position should be created for an administrative assistant to the Board in Vienna, who would keep the files, maintain the database, schedule meetings, handle routine correspondence and track adherence to deadlines. *The Department of Management noted that the creation of those posts would be all the more necessary if the General Assembly approved the proposal by the Secretary-General to create new grievance committees to handle the informal resolution of grievances, which would be assisted by the Joint Appeals Board secretariats.*

E. Joint Appeals Board secretariat in Nairobi

42. From 2000 to 2003, the Nairobi Joint Appeals Board prepared 29 reports (including reports for appeals and requests for suspension of action), or about 7 per year. During 2000, 2001 and 2002, it took an average of 470, 517 and 422 days respectively for a case to reach a panel of the Board. By the end of 2003, this processing period was 551 days, or more than one year (see table 4, annex II). *The Department of Management commented that cases which do not result in a report also require substantial amounts of work for the Joint Appeals Board secretariat and, taking this fact into account, the total number of cases handled by the Nairobi Board between 2000 and 2003 was 50. Concerning the 29 appeal and request for suspension of action cases resulting in a report, it took an average of 53.7 working days for one case. There were also 12 disciplinary cases during this period, which brings the average down to 38 working days per case.*

43. The secretariat of the Joint Appeals Board and the Joint Disciplinary Committee in Nairobi does not maintain a tracking system to monitor cases. There is currently a backlog of 12 cases, which will take about two years to clear at the current rate.

44. In addition, OIOS noted that the mandate of the Nairobi Board did not extend to the Economic Commission for Africa (ECA) in Addis Ababa, although this would be more efficient than the current arrangement, in which Commission staff members are required to seek recourse through the Board in New York. As the Nairobi Board is strengthened, it should assume jurisdiction of ECA staff.

45. The staffing of the Joint Appeals Board and Joint Disciplinary Committee secretariat consists of one Secretary, who until recently also devoted 40 per cent of his time to serving as Secretary of the central review bodies. This represents a blurring of responsibilities and a potential conflict of interest because of the Secretary's involvement in management decisions that could be appealed by staff. *The Department of Management advised that any appearance of conflict of interest had been removed as from 1 May 2004 when the secretariat of the Board and Committee was moved from the Human Resources Management Service to the Office of the Director-General.* Most of the 24 members of the Board are assigned to field programmes and are thus highly mobile, leading to numerous substitutions during the consideration of a case. Although a full-time administrative assistant was assigned to the Board, there was no system to track the leave plans and travel schedules of members, resulting in sporadic advance planning.

46. In the view of OIOS, temporary assistance should be provided to the Nairobi Joint Appeals Board secretariat, possibly by assigning an associate expert, to address the case backlog. The Secretary should be relieved of all duties not related to the Board and Committee. A tracking and planning system should be put in place for tracking the status of cases and the movements of Board members. Efforts should be made to motivate Board members by recognizing their contribution publicly. The Board itself should be enlarged to comprise 36 members in order to increase planning capacity and reduce the number of board member substitutions during the course of cases.

F. Joint Appeals Board membership

47. In accordance with staff rule 111.1 (b), each Joint Appeals Board is composed of chairpersons selected through joint staff-management machinery, members appointed by the Secretary-General and members elected by the staff under jurisdiction of the Board. All members serve in a voluntary capacity. In its meetings with members of the Board at the four headquarters duty stations, OIOS noted that Board members expressed a number of common themes. First, there was a need for more training and the establishment of jurisprudence relating to adjudicated cases, supported by a secretariat with a reliable institutional memory. Tightened process time lines were needed to facilitate planning and to improve credibility. The image of the judiciary system at the United Nations needed to be enhanced. Board members commented on the need for occasional global meetings (in addition to the annual New York Joint Appeals Board meeting) to create a common understanding of their work. Also, voluntary contributions of Board members worldwide should be formally recognized.

G. Panels of Counsel

48. The Panel of Counsel in New York has two General Service staff at its disposal, one G-7 and one G-4. There are no professional staff members. The Panels of Counsel at other headquarters duty stations do not have staff at their disposal and are managed exclusively by volunteers. There are, however, volunteer lawyers available at all duty stations.

49. While the Staff Rules have recently been revised to permit staff members to have access to external lawyers at all stages of the appeals process, at their own expense, in most cases a small group of current and former staff members, who are not all attorneys, serve as counsel. They provide counsel on a voluntary basis, with little institutional support. The regulations and rules governing the terms of employment under a United Nations contract are quite different from the labour laws of any country and, consequently, external lawyers often face difficulties in finding their way in the maze of United Nations manuals and circulars. This means that volunteers from the staff continue to play an essential role, even with revised staff rule 111.2 (i) in place.

50. In order to assist staff in the search for competent counsel, each duty station at which a Joint Appeals Board has been established also has a local Panel of Counsel and a Coordinator. The role of the Coordinator is to mobilize volunteers, match appellants with the best available counsel, provide training and guidance and maintain a database of support documentation. In each duty station, some 12 to 20 names appear on the list of counsel available. In practice, however, OIOS found that the Panels of Counsel in Geneva, Vienna and Nairobi consisted of only a few members who were experienced and active, and the volunteer Coordinators had no resources. Training was rare or non-existent, and volunteer counsel told us that they often felt overwhelmed or inadequate. The situation in New York is less acute, as its Panel of Counsel has a full-time Coordinator as well as administrative assistants (the G-7 and the G-4 mentioned above), while 47 current and retired staff members are listed as available counsel. The Coordinator maintains a web site that is extremely helpful for staff worldwide. Yet even in New York the situation is far from ideal. While the list is long, effective and experienced counsel is difficult to engage, and those volunteers who are active have caseloads exceeding their capacity.

51. In the opinion of OIOS, this shows an imbalance between the resources available to respondents and those available to appellants (mostly volunteers). To strengthen the resources available to appellants, a number of measures could be considered, including the recruitment of professional staff for the Panel of Counsel in New York, who would also assist the Panels in Geneva, Vienna and Nairobi.

H. Office of the Under-Secretary-General for Management

52. The Office of the Under-Secretary-General for Management reviews all reports of the Joint Appeals Board, and makes recommendations to the Under-Secretary-General for Management on the disposal of cases on behalf of the Secretary-General. The Office receives the reports from all four Boards, which in the past has resulted in a major increase of workload for the Office leading to considerable delays, as shown in indicator 6, tables 1-4, annex II. The Senior Legal

Officer, who is primarily responsible for the review, has many other responsibilities as well, and effective 1 July 2003 a second post was established at the P-4 level with funding from the support account to strengthen the Office. However, the post was filled only as from 15 June 2004. Meanwhile, temporary assistance funds have been used to bring additional legal capacity into the Office. In years when this was done, the backlog decreased, and as soon as temporary assistance was withdrawn, the backlog increased once more.

53. The review of the reports by the Office entails an examination of the facts of the case and of the principles of law and policy involved. This requires the transfer of all case files to the Office, and their perusal takes considerable time. OIOS expects that the need to re-establish the facts of each case at this stage of the process will decrease as measures to strengthen the appeals process are implemented.

I. Role of the Department of Management

54. At present, nearly all the entities constituting the core components of the judicial process in New York are under the authority of the Department of Management. This includes the secretariat of the Joint Appeals Board, the secretariat of the Panel of Counsel, the Administrative Law Unit and the Senior Legal Adviser in the office of the Under-Secretary-General. *The Department of Management advised that the Administrative Law Unit was under the Office of Human Resources Management, which, while under the overall authority of the Department of Management, was an autonomous, independent office.*

55. In cases before the New York Joint Appeals Board, the Department of Management serves as the respondent, handling all aspects of appeals as the representative of the Secretary-General, through the Administrative Law Unit. The Secretary of the Board initiates the preparation of the Joint Appeals Board panel's report following the pleadings and provides legal advice or jurisprudence to members of the panel. The Department of Management also serves as the representative of the Secretary-General through the Senior Legal Adviser in the Office of the Under-Secretary-General, formulating a decision on the Secretary-General's behalf. OIOS believes that the concentration of responsibilities in the Department of Management could be too readily perceived as a conflict of interest situation, diminishing the objectivity of the appeals process.

56. In the view of OIOS, the delegation of authority by the Secretary-General to the Department of Management should be reviewed with a view to addressing any appearance of conflict of interest. Measures to be considered should include transferring to the Office of the Secretary-General the responsibility to formulate final decisions on appeals. This arrangement would have the added benefit of strengthening the accountability structure of the United Nations Secretariat, since the Secretary-General is ultimately accountable for administrative decisions. An alternative could involve transferring some of the responsibilities currently entrusted to the Department of Management to other Secretariat units.

57. *The Department of Management commented that the issue of the perception of conflict of interest had been addressed in the late 1980s when the responsibility for preparing decisions on Joint Appeals Board reports was removed from the Office of Human Resources Management and assumed by the Office of the Under-Secretary-General for Management. This was precisely because the Office of Human*

Resources Management was responsible for the preparation of the respondent's reply before the Joint Appeals Board. The Department of Management added that, apart from the Office of the Secretary-General, the only possible other Secretariat office to which some of the responsibilities of the Department of Management could be transferred was the Office of Legal Affairs. However, in the view of the Department, such a transfer of responsibilities would create the appearance of an even greater conflict of interest than the one OIOS is proposing to remedy. This is because the Office of Legal Affairs acts as respondent in defending the Secretary-General's decisions on appeals before the Administrative Tribunal and cannot therefore be the office responsible for writing the decisions. OIOS acknowledges the Department of Management's comments, which should be taken into account when measures to address perceptions of conflict of interest in the appeals process are considered.

V. Training and communication

A. Need for training and communication

58. There is general recognition that a system dependent on volunteers requires frequent and comprehensive training opportunities. In its report on administration of justice at the United Nations issued in 2000 (see A/55/57), the Joint Inspection Unit pointed out that basic law courses should be offered to new members of the Joint Appeals Board and the Joint Disciplinary Committee with special reference to the terms of appointment of United Nations staff, the administrative policies and practices of the Organization and the jurisprudence of the United Nations Administrative Tribunal (ibid., recommendation 4 (b)). In response to the proposals of the Joint Inspection Unit, the Secretary-General expressed his intention to provide such training and additional targeted training, including lessons learned, at all levels of the Secretariat in order to disseminate information regarding recourse procedures and administrative policies and practices and to brief managers, personnel officers, executive officers and administrative personnel on the outcome of appeal cases and United Nations Administrative Tribunal judgements (A/55/253 and Corr.1, annex V, para. 5). The Advisory Committee on Administrative and Budgetary Questions, commenting on those reports, welcomed the initiative on the part of the Administration (A/55/514, para. 13).

59. OIOS noted that a recent information circular on conflict resolution in the United Nations Secretariat (ST/IC/2004/4) provided an overview of the various entities involved. Although it gave valuable links to various web sites where more detailed information could be found, efforts were still needed to meet the comprehensive and analytical training programme goals. The Administration's intent to provide a focused training programme was reiterated in the report of the Secretary-General on the administration of justice submitted to the General Assembly at its fifty-sixth session (A/56/800, para. 33). However, to date, implementation has been limited.

60. In New York, the Coordinator of the Panel of Counsel regularly organizes lectures and seminars, while the Joint Appeals Board secretariat last organized a plenary organizational session in October 2003, followed by a training session for Board members attended by the Under-Secretary-General for Management in May

2004. At the other headquarters duty stations, little or no training has been offered on the administration of justice in recent years. For field staff worldwide, no such programmes are available. Also, analytical material identifying lessons that managers could learn from United Nations Administrative Tribunal rulings has not been made available.

61. The Office of Human Resources Management, as part of its mandate to provide learning opportunities, should organize a yearly two-day course at each of the headquarters duty stations for all staff involved in the judiciary process, following the design outlined by the Secretary-General in his report (A/55/253, annex V).

62. In addition, the Under-Secretary-General for Management in New York, as well as the Directors-General of the other headquarters duty stations, should consider reviving the practice that was common in the late 1980s of convening an annual meeting with the members of the Joint Appeals Board, the Joint Disciplinary Committee, the Panel of Counsel and key members of the Administration to review the results achieved, address questions on policy and operational support issues and participate in an open dialogue session. *The Department of Management stated that meetings with the members of the Joint Appeals Board/Joint Disciplinary Committee panels and secretariats should be held separately from meetings involving persons acting for the respondent and the Panel of Counsel, particularly where questions on policy and operational support were going to be discussed.* OIOS has reworded its recommendation to take the Department's comment into account.

B. Data collection and tracking

63. OIOS noted that the four Joint Appeals Board Secretaries were not tracking all process milestones in a consistent manner. For example, processes with time implications such as submitting the draft preliminary report, pleading and requesting an extension were not fully tracked in New York, Vienna and Nairobi. In many cases OIOS found that the appellant's address was not included in the logbook of the New York Joint Appeals Board, although this is key information for the establishment of compulsory deadlines. Generally, the tracking systems reviewed by OIOS did not provide a red flag for expiring deadlines to assist Board staff in enforcing and monitoring the deadlines. Also, the electronic tracking system was not secure, since information could be substituted at any time. Furthermore, OIOS found that the Nairobi Board did not have any type of tracking system.

64. It would be desirable for staff to be able to have password-protected electronic access to the status of their appeals. This could be either web-based or employ LotusNotes.

VI. Recommendations

65. In order to shorten delays and to improve the appeals process and make it more efficient, OIOS is issuing 18 recommendations to the Secretary-General, as follows:

Recommendation 1 (AH2004/512/01):[3] Adopt the time lines for the appeals process set out in annex III, reflecting both existing procedural deadlines and new deadlines suggested by OIOS. Direct the secretariats of the Joint Appeals Board to amend their Rules of Procedure accordingly (paras. 10, 13, 16-20).

The Department of Management accepted this recommendation provided that the limit on extension of the deadline to reply to appeals presented in annex III not be made mandatory until the staffing shortages had been addressed and the backlog eliminated in the offices concerned.

Recommendation 2 (AH2004/512/02): Amend staff rule 111.2 (a) to the effect that staff wishing to appeal an administrative decision shall, as a first step, address a letter to the Secretary-General and send a copy to the executive head of the staff member's department, office, fund or programme requesting that the administrative decision be reviewed. Requests for review submitted by the staff of the separately administered funds and programmes (UNDP, UNFPA, UNOPS and UNICEF) should be addressed to the appropriate executive head (para. 9).

The Department of Management accepted this recommendation.

Recommendation 3 (AH2004/512/03): Instruct the Administrative Law Unit to clarify with managers its requirements for the respondent's reply and the contributions expected from managers in order for the respondent's reply to be prepared in a timely and comprehensive manner (para. 12).

The Department of Management accepted this recommendation.

Recommendation 4 (AH2004/512/04): Direct the secretariats of the Joint Appeals Board to amend the Rules of Procedure to the effect that the presiding officer may give only one extension, of no more than one month, to the respondent to allow the respondent to prepare an initial reply. In case this deadline is not met, the presiding officer should determine whether the case can proceed without input from the respondent (para. 13).

The Department of Management accepted this recommendation, with the proviso that it should not be made mandatory until the staffing shortages mentioned in the present report had been addressed and the backlog eliminated in the offices concerned.

Recommendation 5 (AH2004/512/05): The Department of Management should assess, after one year, the extent to which the addition of extra staff has reduced the delays in the preparation of the respondent's replies and thereafter consider the need to amend the Staff Rules to the effect that the Secretary-General shall approve by default the appellant's access to the United Nations Administrative Tribunal should the respondent fail to respond within the prescribed time frame (paras. 14 and 15).

The Department of Management and the Office of Legal Affairs have provided comments, set out in paragraph 15 above, expressing the concern that a fast-track measure would not necessarily speed up the process. Furthermore, in order to implement such a measure, the General Assembly would have to amend the United Nations Administrative Tribunal statute so that a direct appeal could be made in the absence of a finding by the Joint Appeals Board when the respondent failed to

[3] The symbols in parentheses in this section refer to an internal code used by OIOS for recording recommendations.

respond within the prescribed time limits. In the view of the Department of Management, the failure to submit in a timely manner the respondent's reply, as noted by OIOS, is mainly a question of insufficient resources.

Recommendation 6 (AH2004/512/06): Direct the secretariats of the Joint Appeals Boards to amend the Board's Rules of Procedure to the effect that pleadings should consist of the respondent's reply, the appellant's observations and, if needed, one additional set of comments from the respondent and one final statement from the appellant. If deadlines are not strictly observed, a case may be declared abandoned or proceed on the basis of available information (paras. 16 and 17).

The Department of Management accepted this recommendation.

Recommendation 7 (AH2004/512/07): Direct the secretariats of the Joint Appeals Boards to amend the Rules of Procedure of the Boards to authorize the presiding officer to place a case at the front of the queue when it concerns the non-renewal of contract, as protracted delays cause undue hardship given the financial implications of unemployment (para. 19).

The Department of Management did not accept this recommendation on the basis that a significant number of cases concern the non-renewal of contracts, and giving priority to those could be seen as subjective. OIOS, however, continues to believe that since time is of the essence for this category of appeals, they should be given priority over other cases.

Recommendation 8 (AH2004/512/08): Maintain the Administrative Law Unit's current staffing level of five Professional posts until such time that its productivity gains during 2003 have been consolidated and the current backlog has been eliminated (para. 32).

The Department of Management accepted this recommendation.

Recommendation 9 (AH2004/512/09): Sustain the current effort to provide additional capacity to the secretariat of the New York Joint Appeals Board from temporary assistance funds to clear its backlog and consider adding a Professional post at the P-3 level, bringing the total staffing to four, to prevent the accumulation of a new backlog. Regularize the temporary arrangement to provide a full-time presiding officer and to make use of the procedural powers of the presiding officer to streamline the work of the Board (para. 35).

The Department of Management accepted this recommendation, noting that its implementation would require the establishment of a new post for the New York Joint Appeals Board.

Recommendation 10 (AH2004/512/10): Strengthen the current staffing of the Board secretariat in Geneva by upgrading one P-2 post to P-3 and allowing for the creation of a Deputy Secretary post that is not subject to biannual rotation, thereby increasing institutional stability and productivity. Allocate general temporary assistance funding until the backlog is eliminated (paras. 37 and 38).

The Department of Management accepted this recommendation.

Recommendation 11 (AH2004/512/11): Establish a full-time post of Secretary at the P-3 level for the Vienna Joint Appeals Board, together with a part-time position of administrative assistant. In order to fully use the additional capacity created by

the post of Secretary, include in its responsibilities the backstopping of other Joint Appeals Board secretariats during peak periods (paras. 40 and 41).

The Department of Management accepted this recommendation.

Recommendation 12 (AH2004/512/12): With respect to the Joint Appeals Board in Nairobi: reinforce its secretariat capacity with an associate expert to address the current backlog; expand its jurisdiction to include ECA; establish case tracking and planning systems; expand its membership from 24 to 36 to facilitate the establishment of a panel; and ensure that its Secretary is not assigned to functions that could create a conflict of interest with his core duties (paras. 45 and 46).

The Department of Management accepted this recommendation.

Recommendation 13 (AH2004/512/13): Consider the addition of a Professional post to the Panel of Counsel in New York, the incumbent of which would also provide support to the Panels of Counsel in the other headquarters duty stations (paras. 48-51).

The Department of Management accepted this recommendation.

Recommendation 14 (AH2004/512/14): Take appropriate measures to eliminate the appearance of conflict of interest in the Department of Management related to the management of the appeals process. Such measures could include transferring some of the responsibilities currently entrusted to the Department of Management to either the Office of the Secretary-General or other Secretariat units (paras. 54-57).

The Department of Management has provided comments, set out in paragraph 57, stating that transferring some of the responsibilities currently entrusted to the Department to the Office of Legal Affairs (one of the possibilities) would create the appearance of a greater conflict of interest than the one identified by OIOS within the Department of Management. However, the Department raised no objection regarding a transfer of responsibilities to the Executive Office of the Secretary-General. The Department advised that a number of proposals concerning the realignment of responsibilities among the entities involved in the United Nations administration of justice system would have to be considered together with this recommendation.

Recommendation 15 (AH2004/512/15): Instruct the Office of Human Resources Management to organize a yearly two-day training course at each of the headquarters duty stations for all staff involved in the judiciary process, following the design outlined by the Secretary-General (see A/55/253, paras. 58-61).

The Department of Management accepted this recommendation, subject to the provision of adequate resources.

Recommendation 16 (AH2004/512/16): Instruct the Under-Secretary-General for Management in New York, as well as the Directors-General of the other headquarters duty stations, to convene an annual meeting with the members of the local Joint Appeals Board and Joint Disciplinary Committee, officials acting for the respondent and the Panel of Counsel (para. 62).

The Department of Management accepted this recommendation, provided that meetings with the members of the Joint Appeals Board/Joint Disciplinary Committee panels and secretariats are held separately from the meetings involving persons acting for the respondent and the Panel of Counsel.

Recommendation 17 (AH2004/512/17): Instruct the secretariats of the four Joint Appeals Boards to adopt a standardized electronic tracking system with sufficient information on expected deadlines and actual data in the appeals process. If established, the new tracking system should be able to provide all the information necessary for the regular monitoring of trends in the appeals process and be accessible to all parties concerned (para. 63).

The Department of Management has not provided written comments on this recommendation, but it advised that it had no objection to the adoption by the Joint Appeals Board secretariats of a standardized electronic system for tracking deadlines and actual data in the appeals process.

Recommendation 18 (AH2004/512/18): Develop a password-protected electronic system to allow staff to ascertain the status of their appeals (para. 64).

The Department of Management has not provided written comments on this recommendation. However, the Department advised that it generally had no objection to the development of a system to allow staff to ascertain the status of their appeals. The system, however, need not be password-protected. In the case of New York, for example, the Department has developed a system whereby cases are identified by number and not by name.

(*Signed*) Dileep **Nair**
Under-Secretary-General for Internal Oversight Services

Annex I

Process and time frames for the submission of appeals

A. Request for review

Condition[a]	*Time frame*[b]
No appeal can be filed prior to the request for administrative review (staff rule 111.2 (a))	
1. Time frame for the submission of a request for review: a request for administrative review can be submitted to the Secretary-General within 2 months of the date on which the staff member received written notice of the administrative decision in question.	2 months
2. Three options after receiving the request for review:	
(a) Seek conciliation with the assistance of a chairperson or member of the Joint Appeals Board designated by the presiding officer. The time limit for filing an appeal may be suspended; conciliation should normally be completed within 2 months (Joint Appeals Board rule III.B). If conciliation fails, the time limit set out in staff rule 111.2 (a) (ii) applies.	Optional conciliation, 2 months
(b) Answer the request for review:	
• Within 1 month if the staff member is stationed in New York.	1 or 2 months
• Within 2 months if the staff member is stationed outside New York.	
(c) Do not answer within the time limits of (b) above.	

[a] Conditions are based on: article XI of the United Nations Staff Regulations (ST/SGB/2003/5); article XI of the 100 series of the Staff Rules (ST/SGB/2002/1, as amended by ST/SGB/2003/1 and ST/SGB/2003/8); information included in the New York Joint Appeals Board web page; list of templates provided by New York secretariat of the Joint Appeals Board/Joint Disciplinary Committee; and Rules of Procedures and Guidelines of the Joint Appeals Board at headquarters.

[b] Deadlines are indicated on the basis of the documentation indicated in footnote a.

B. Filing an appeal

Condition	*Time frame*
Any kind of incoming correspondence is logged in	Immediate
1. A staff member can request the Joint Appeals Board to file an appeal within 1 month of the date on which the Secretary-General's reply to the request for review was received or within 1 month of the deadline for receipt of the reply (1 month for staff stationed in New York or 2 months for staff stationed outside New York). Only appeals received within the time limit are receivable.	1 month
2. The Secretary of the Joint Appeals Board reviews the file to verify the content:	No time limit
• If the submission contains no information regarding the nature or substance of the claim and is thus not properly receivable, the Board's' secretariat will formally request the appellant to resubmit the relevant documentation.	

Condition	*Time frame*
• If the submission contains an incomplete statement of appeal, the request will be accepted by the Board for the purpose of establishing the date on which the appeal was filed. The Joint Appeals Board secretariat will issue a request for a complete statement of appeal.	1-month extension of time limit for all cases
• If the appellant does not submit 6 copies of all documents, the Secretary will request the appellant to do so.	
• If the appellant does not submit a complete statement of appeal, he/she will be requested to do so.	
3. If/when the Joint Appeals Board secretariat considers the submission complete, the appeal is logged into the database and a case number is assigned. A copy is forwarded to the respondent for a reply (staff rule 111.2 (g): the respondent's reply is due within 2 months of receipt of the statement of appeal). A letter acknowledging the submission of the appeal to the respondent is issued to the appellant.	No formal time limit
4. The respondent's reply is due within 2 months of receipt of the copy of the statement of appeal (staff rule 111.2 (g)).	2 months
Cases	
• If the respondent fails to submit a reply within the time limit (2 months), this fact shall not delay the consideration of the appeal and a panel shall be constituted to consider the appeal (Joint Appeals Board rule III.N).	No further extension
• If the respondent requests an extension of the time limit, the presiding officer may grant the request and set a new deadline (rule III.N). The presiding officer informs the appellant via official letter.	Indefinite
• If the respondent replies to the statement of appeal within the regular time limit (2 months) or before the new deadline, the Secretary of the Board officially informs the appellant, transmits the reply and invites the appellant to submit observations within 1 or 2 months (depending on duty station).	No time limit to inform the appellant
5. Within 1 month (for staff stationed in New York) or 2 months (for staff stationed elsewhere), the appellant shall submit his/her observations, if any (rule III.J.5).	1 or 2 months
Cases	
• If the appellant does not answer within the time limit (1 or 2 months), the Board Secretary reminds the appellant that an answer is expected and in a second and final communication informs the appellant of the new deadline. If no answer is received after two successive attempts to communicate with the appellant, the presiding officer may deem the appeal to have been abandoned.	No time limit for new deadline or maximum time extension
6. Additional comments on the respondent's replies and the appellant's observations can be made within the time limit of 2 weeks for appellants stationed in New York and 1 month for those stationed elsewhere.	No time or number limit
7. The appeal is queued for the next available Joint Appeals Board panel Secretary. The panel Secretary takes a case from the backlog in order of the date of submission. As soon as a panel Secretary is available, the Joint Appeals Board panel is constituted.	No deadline

Condition	*Time frame*
8. The newly assigned panel Secretary studies the case file and generates a preliminary report (on average a 10-page report containing information about the appellant and the case).	No deadline
9. The Board Secretary reviews the preliminary report and discusses it with the panel Secretary.	No deadline
10. Once the preliminary report has been finalized, the Board secretariat starts constituting the panel, contacting possible members of the Board and scheduling (if possible) a date for the first meeting.	No deadline
• The Board Secretary informs the panel members about the case file (including the preliminary report) and, when possible, indicates the date of the first meeting.	
• The Board Secretary informs the appellant of the composition of the panel.	
11. The panel acts with the maximum dispatch consistent with a fair review (staff rule 111.2 (m)).	No deadline
• The panel may meet in executive session	
• The panel may hold a hearing upon request by the panel or the parties.	
12. Within 1 month of the date on which the consideration of an appeal has been completed, the panel shall adopt and submit a report to the Secretary-General (staff rule 111.2 (n)). Within one month of the completion of the report, the Board Secretary shall:	
• Request members of the Board to sign the report	1 month
• Send to the Under-Secretary-General for Management the report; in the letter there is no indication of a deadline for the expected answer	
• Inform the appellant that the Board report has been submitted to the Secretary-General.	
13. A final decision shall be taken by the Under-Secretary-General for Management within 1 month after the panel has forwarded its report (staff rule 111.2 (p)).	1 month
• If the Under-Secretary-General does not respond within 1 month after the panel has forwarded its report, the appellant can request the report of the panel	
The panel considering the appeal can decide to waive the time limits (Board rule III.G).	Time limit waiver
The panel, upon written request before the expiration of a specific term, can extend time limits under certain circumstances (Board rule III.M).	Time limit waiver
The panel may wish to have written interrogatories with any party, witness or expert. The panel establishes time limits and procedures. Each party will receive copies of questions and answers and each party has the opportunity to comment thereon.	Time limit waiver

Annex II

Amount of time required to complete elements of the appeals process at headquarters duty stations

The following indicators for the implementation of the appeal process are used in the tables below:

	Indicators
1.	Period from the date on which the request for appeal was received by the Joint Appeals Board secretariat to the date on which the statement of appeal was submitted to the respondent.
2.	Period from the date on which the statement of appeal was submitted to the respondent to the date on which the respondent submitted the reply.
3.	Period from the date on which the respondent's reply was submitted to the appellant for observation (this is considered to be the same date as that on which the respondent's reply was received by the Board Secretary) to the date on which the appellant submitted his/her observations.
4.	Period from the date on which the observations of the appellant were received to the date of the first Board meeting.
5.	Period from the date of the first Board meeting to the date on which the final decision of the Board was submitted to the Under-Secretary-General for Management.
6.	Period from the date on which the Board's decision was submitted to the Under-Secretary-General to the date on which the Under-Secretary-General submitted the decision.
7.	Period from the filing date to the date of the first meeting of the panel of the Board.
8.	Period from the date on which the statement of appeal was received by the Board Secretary to the date on which the Under-Secretary-General submitted a final decision.

Table 1
Appeals filed at the New York Joint Appeals Board

Year of submission to USG	Cases with final JAB report	Indicator 1 Cases	Indicator 1 Average time (days)	Indicator 2 Cases	Indicator 2 Average time (days)	Indicator 3 (total)[a] Cases	Indicator 3 (total)[a] Average time (days)	Indicator 3 (New York) Cases	Indicator 3 (New York) Average time (days)	Indicator 3 (non-New York) Cases	Indicator 3 (non-New York) Average time (days)	Indicator 4 Cases	Indicator 4 Average time (days)	Indicator 5 Cases	Indicator 5 Average time (days)	Indicator 6 Cases	Indicator 6 Average time (days)	Indicator 7 Cases	Indicator 7 Average time (days)	Indicator 8 Cases	Indicator 8 Average time (days)
1999	38	36	16.2	36	246.3	28	56.5	12	41.2	14	73.3	25	311.4	32	101.2	38	86.1	31	598.8	38	802.1
2000	40	39	9.0	39	268.5	36	95.8	20	77.3	16	118.9	35	377.8	38	85.6	40	63.5	37	755.6	39	913.9
2001	39	19	15.5	39	299.3	36	83.5	16	62.8	20	100.1	37	380.1	39	136.7	37	93.0	39	840.5	39	1 097.7
2002	34	34	41.7	34	335.3	32	99.0	14	149.1	18	60.1	33	346.5	34	101.9	35	160.0	34	847.4	32	1 096.2
2003	63	63	39.7	63	448.9	51	85.6	27	69.0	24	104.2	49	390.8	61	46.2	51	67.0	61	996.1	58	1 091.7
Total	**214**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Notes: Data were extracted from the New York Joint Appeals Board tracking system except for indicator 6, years 2001-2003 (shaded), which were provided by the Office of the Under-Secretary-General for Management. All data include United Nations Secretariat, United Nations Development Programme and United Nations Children's Fund cases.

The 214 appeal cases are from the New York Joint Appeals Board tracking system for the period 1999-2003:

- Only cases for which a final Joint Appeals Board report was submitted between 1999 and 2003 were compiled
- Appeal cases are classified according to the year in which the final Joint Appeals Board report was submitted (e.g., the Board's database indicates that in 1999 a total of 38 appeal cases were decided by the New York Board).

[a] Indicator 3 has a major subdivision since the appellant filing an appeal with the New York Joint Appeals Board has 1 or 2 months to submit his/her observations, depending on his/her duty station.

Table 2
Appeals filed at the Geneva Joint Appeals Board

Year of submission to USG	Cases with final JAB report	Indicator 1		2		3 (total)		4		5		6		7		8	
		Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)
2000	22	21	8.3	21	65.6	18	52.9	22	96.6	22	70.4	22	53.0	21	333.3	22	441.4
2001	9	9	10.9	9	70.0	9	53.6	9	153.7	9	39.0	15	86	9	483.9	9	602.2
2002	16	16	13.3	16	68.6	15	62.1	16	247.2	16	42.6	8	122	16	582.5	16	767.8
2003	13	13	9.1	13	69.2	12	50.3	13	164.8	13	43.0	21	103	13	479.0	11	584.6
Total	**60**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Notes: Data were extracted from the Geneva Joint Appeals Board tracking system except for indicator 6, years 2001-2003 (shaded), which were provided by the Office of the Under-Secretary-General for Management.

The total Joint Appeals Board sample under analysis is composed of 60 appeal cases filed after 1 January 1999 and finalized by the Geneva Board between 2000 and 2003:

- Appeal cases are classified according to the year in which the final Joint Appeals Board report was submitted
- Only cases for which a final Joint Appeals Board report was submitted between 2000 and 2003 were compiled.

Table 3
Appeals filed at the Vienna Joint Appeals Board

Year of submission to USG	Cases with final JAB report	Indicator 1		2		3 (total)		4		5		6		7		8	
		Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)	Cases	Average time (days)
2001	6	6	8.8	6	75.3	6	40.8	6	80.0	6	18.8	5	70	6	205.0	5	314.0
2003	13	13	19.7	13	83.7	13	38.9	13	197.2	13	169.2	4	53	13	339.5	11	515.5
Total	**19**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Notes: No appeals were finalized in 2000 and 2002.

Data were extracted from the Vienna Joint Appeals Board tracking system except for indicator 6, years 2001 and 2003 (shaded), which were provided by the Office of the Under-Secretary-General for Management.

The 19 appeal cases are classified according to the year in which the final Joint Appeals Board report was submitted: only cases for which a final Joint Appeals Board report was submitted between 2000 and 2003 were compiled.

Table 4
Appeals filed at the Nairobi Joint Appeals Board

		Indicator															
		1		*2*		*3*		*4*		*5*		*6*		*7*		*8*	
Year of submission to USG	*Cases with final JAB report*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*	*Cases*	*Average time (days)*
2000	5	4	156	3	43	-	-	-	-	3	41	5	78	3	470	5	568
2001	3	3	229	2	228	-	-	-	-	3	117	4	82	3	517	3	718
2002	6	5	18	5	51	-	-	-	-	5	104	8	122	6	422	6	646
2003	5	5	80	4	107	-	-	-	-	5	133	5	131	5	551	4	796
Total	**19**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Notes: The information has been recompiled by OIOS from original appeal files (one case has not been included in the analysis). Indicator 6 data for the 2001-2003 period (shaded) were provided by the Office of the Under-Secretary-General for Management.

Indicators do not make a distinction between United Nations Secretariat, United Nations Development Programme and United Nations Children's Fund cases.

- Appeal cases are classified according to the year in which the final Board report was submitted.
- Only cases for which a final Joint Appeals Board report was submitted between 2000 and 2003 were compiled.

Annex III

Current and proposed time lines for the appeals process

Step in the process	Time line for staff: In New York – Proposed	In New York – Current	In Geneva, Vienna and Nairobi – Proposed	In Geneva, Vienna and Nairobi – Current	Elsewhere – Proposed	Elsewhere – Current	Reference to section in annex I
1. Administrative Law Unit considers request for review	1 month	1 month	2 months	2 months	2 months	2 months	A.2
2. Staff member submits an appeal	1 month	1 month	1 month	1 month	1 month	1 month	B.1
3. Joint Appeals Board verifies receivability and sends appeal to respondent	1 month	1 month (for receivability only)	1 month	1 month (for receivability only)	1 month	1 month (for receivability only)	B.2; B.3
4. Respondent replies with 1 extension	3 months, including 1 extension	2 months for first reply; no time line for extensions	3 months, including 1 extension	2 months for first reply; no time line for extensions	3 months, including 1 extension	2 months for first reply; no time line for extensions	B.4
5. Appellant prepares observations	1 month	1 month	1 month	1 month	2 months	2 months	B.5
6. Further pleadings by both parties	2 weeks plus 2 weeks (1 pleading per party)	2 weeks (with no restriction in number of further pleadings)	2 weeks plus 2 weeks (1 pleading per party)	2 weeks (with no restriction in number of further pleadings)	2 weeks plus 2 weeks (1 pleading per party)	1 month (with no restriction in number of further pleadings)	B.6
7. Joint Appeals Board constitutes panel and prepares documentation for first panel session	2 months	No time line	2 months	No time line	2 months	No time line	B.7; B.8; B.9; B.10
8. Panel reviews case	2 months	No time line	2 months	No time line	2 months	No time line	B.11
9. Board Secretary prepares report and panel reviews and adopts it	1 month	1 month	1 month	1 month	1 month	1 month	B.12
10. USG takes decision on panel report	1 month	1 month	1 month	1 month	1 month	1 month	B.13
11.[a] Transit of inter-office correspondence	1 month	Not available	1 month	Not available	6 weeks	Not available	-
12. Maximum total time required	15 months	-	16 months	-	18 months and 2 weeks	-	-

[a] The time line indicated in this step is only indicative.